superintendent, within the meaning of the Employer's Liability Act, when in the absence of the superintendent he was directing boiler repairs.

Employer's Liability Acts which have been adopted in several of the states are framed upon the same plan as the English statute, passed in 1880. 43 & 44 Vict. Cap. 42. The purpose and effect of these acts have been to enlarge the employer's common-law liability. At common law a superintendent was a fellow-servant. *Howels v. London Steel Co.,* L. R. 10 Q. B. 63; *Rogers v. Ludlow Mfg. Co.,* 144 Mass. 198. But in Ohio and Kentucky all employees have been allowed to recover in the absence of statute. *Little Miami v. Stevens,* 20 Ohio 415; *Louisville, etc., R. R. Co. v. Collins,* 20 Duvall (Ky.) 114. However this may be, the one purpose of the statute clearly was to prevent the plaintiff from assuming the risk of a superintendent's negligence. *Malcolm v. Fuller,* 152 Mass. 160. The courts have not clearly defined "a superintendent" and there has been much doubt in the interpretation of the words "sole and principal duty" which are used in all statutes. Obviously each case must stand upon all the circumstances connected with it. It has been decided that mere superintendence is not always enough to bring the case within the Act. *Onid v. O'Leary,* 164 Mass. 387. Nor does the fact that the employee has charge of the ways, works, machinery, or plant, fix his character as a superintendent. *Staffers v. General Steam Nav. Co.* 10 Q. B. D. 356. Negligence must occur not only during the period of superintendence but in the exercise of it. *Fitzgerald v. B. & A. R. R. Co.,* 156 Mass. 293. A servant may at times act as a superintendent. *Cushman v. Chase,* 156 Mass. 342.

MUNICIPAL CORPORATIONS—POLICE POWER—BILLBOARDS.—CITY OF PASSAIC V. PATERSON BILL POSTING CO., 62 ATL. 267 (N. J.).—A city ordinance requiring that signs or billboards shall be constructed not less than ten feet from the street line, *held,* a regulation not necessary for public safety and not justified as an exercise of the police power, *reversing* 71 N. J. L. 75, 58 Atl. 343.

There has been a determined effort by municipal corporations during the past few years to regulate the size and location of advertising billboards but these ordinances have in many cases been declared invalid as an attempt to appropriate private property without compensation. *Bill Posting Sign Co. v. Atlantic City,* 58 Atl. 342 (N. J.). The first American case on the subject of billboards was *Crawford v. Topeka,* 51 Kan. 756, where ordinance prohibiting such signs within a certain distance of sidewalk was held invalid. The same result was reached in *City of Chicago v. Gunning System,* 114 Ill. App. 377, the regulation here applying to size, location, height, and material of signs; so an ordinance forbidding erection of signs visible from a public park was void. *Com. v. Boston Adv. Co.,* 188 Mass. 348; like ordinance in N. Y. City restraining the use of lots adjacent to parks for such purposes was invalidated. *People v. Green,* 83 N. Y. Sup. 460. The most recent decision in this country is *Bryan v. Chester,* 61 Atl. 894 (Pa.), where an ordinance prohibiting the use of fences for advertising and erection of billboards, was clearly held unconstitutional. The courts of New York have, however, taken a more popular, if less legal, view of billboard legislation. An ordinance that no billboard should be erected more than 6 ft. high without permission of the city council was declared valid as reasonable police regulation. *Rochester v. West,* 164 N. Y. 510; like holding in *Gunning System v. City of Buffalo,* 77 N. Y. Supp. 987, for billboards over 7 ft. in height. The Federal Courts for New York have followed the law of that state in regarding billboards as nuisances; *Whitmier v. Buffalo,* 118 Fed. 773. But the ordinance was held to have no retroactive effect. The California courts also seem to have followed the New York doctrine. *In re Wilshire,* 103 Fed. 620.

MARRIAGE—EVIDENCE—CONSENT.—STATE V. WILSON, 62 ATL. 227 (DEL.). —*Held,* that, although the witness had lived with the accused as his wife without having been married to him, had introduced him as her husband to her family, and had signed a bail bond in his name as his wife, such facts did not prove a marriage so as to render her incompetent as a witness.

Consensus, non concubitus, facit matrimonium is a rule taken from the civil law and recognized as a fundamental principle to-day. *Dalrymple v. Dal-*

rymple, 17 Eng. Rul. Cas. 11. Hence evidence must establish matrimonial consent. 1 *Fras. Husb. and Wife,* 399; *Campbell v. Campbell,* L. R. 1 H. L. Sec. 200. Marriage cannot be proved by cohabitation alone. *Com. v. Stump,* 53 Pa. 132. And acknowledgment to avoid suspicion does not appear to be enough. *Rose v. Clark,* 8 Paige 574. The evidence, however, need not be direct. Upon showing of certain facts presumption will arise which may become unanswerable. *Campbell v. Campbell, supra.* The proof, to raise such a presumption, must be that the parties held themselves out as married and assumed the rights and duties of the relationship. Their reputation must be general and consistent with matrimonial cohabitation and must not have been illicit in its inception unless facts clearly show a subsequent matrimonial consent. *Dysart Peerage Case,* L. R. 6 App. Cas. 514; *Rundle v. Pegram,* 49 Miss. 756; *Wilcox v. Wilcox,* 46 Hun. 40. In criminal actions where proof of marriage would be proof of guilt the presumption will not be entertained or is rebutted by the presumption of innocence. In such cases there must be actual proof of marriage. *Morriss v. Miller,* 4 Burr. 56; *Clayson v. Wardell,* 4 Comst. 242. Where statutes provide a legal ceremony they are construed as merely directory unless there is an express provision that marriages not following the statute shall be void. *Meister v. Moore,* 96 U. S. 76.

NEGLIGENCE—BURDEN OF PROOF—CONTRIBUTORY NEGLIGENCE.—AXELROD V. NEW YORK CITY RY., 95 N. Y. SUPP. 1072—*Held,* that in an action for injuries, plaintiff has the burden of proving freedom from contributory negligence. Patterson, J. *dissenting.*

The decisions upon this point are in direct conflict. The rule has been stated to be that the burden is on the plaintiff to show affirmatively by a preponderance of sufficient evidence not only that the negligence of the defendant contributed to the accident but also that the plaintiff was entirely free from negligence proximately causing the injury. *Thomas, Negligence,* 357; *Chisholm v. State,* 141 N. Y. 246. On the other hand it is said that contributory negligence is purely a matter of defense. *Randall v. Northern Tel. Co.,* 54 Wis. 140; *Robinson v. W. P. R. Co.,* 48 Cal. 409. The weight of authority seems to be against the present case. *McKimble v. B. & M. Railroad,* 139 Mass. 542; *Penn. Canal Co. v. Bently,* 66 Penn. St. 30. The greatest negligence on the part of the defendant will not cure the least negligence contributory to the injury on the part of the plaintiff. *Griffin v. N. Y. Cent. R. Co.,* 40 N. Y. 34. Some states, however, adopt the doctrine of comparative negligence, holding that although the injured person has contributed slightly to his own injury, yet recovery may be had if the defendant was grossly negligent. *Chicago etc. R. v. Johnson,* 116 Ill. 206; *Houston etc. R. Co. v. Gorbett,* 49 Tex. 473.

SLAVERY—RIGHT OF INHERITANCE—JOHNSON V. SHEPHERD, 39 So. 223 (ALA.)—Slaves cohabited and had a child before the war. Upon the death of the mother the father commenced a cohabitation with another slave which continued until after the close of the war, resulting in the birth of another child. *Held,* that though the second child born after the war, was legitimate, he could not inherit from first child who was illegitimate.

It was formerly the law when slavery existed in this country that a slave could not marry, because he could not make a valid contract; *Hall v. United States,* 92 U.S. 27; because the duties of slaves were inconsistent with those of a husband or a wife; *Malinda v. Gardner,* 24 Ala. 719; and because a slave was property. *Howard v. Howard,* 6 Jones (N. C.) 235. But after emancipation the legal relation of man and wife attached upon the theory of a common-law marriage. *Washington v. Washington,* 69 Ala. 281. Hence where slavery was recognized, in the absence of statute, legitimacy of colored offspring was determined by whether birth of child was before or after Sept. 29, 1865. *Malinda v. Gardner, supra.* No such distinction, however, in non-slave state. *Norris v. Williams,* 39 Ohio. St. 554.